IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEVON ENERGY PRODUCTION COMPANY, L.P.,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. ___________
	§	
VS.	§	
	§	
DENBURY RESOURCES, INC.; and NEWFIELD EXPLORATION COMPANY.	§	
Defendant.		

PLAINTIFF DEVON ENERGY PRODUCTION COMPANY, L.P.'S
ORIGINAL COMPLAINT & REQUEST FOR DECLARATORY JUDGMENT

Plaintiff Devon Energy Production Company, L.P. files this Original Complaint as follows:

A. INTRODUCTION

1. Plaintiff Devon Energy Production Company, L.P. is the record title owner of a terminated lease (the "Lease") in the Gulf of Mexico. As a result of a Farmout Agreement, Defendants Denbury Resources, Inc. and Newfield Exploration Company – jointly or separately (both entities have pointed the finger at the other) – owe Devon indemnity for any and all costs, expenses, liabilities, claims, demands, or causes of action related to the plugging and decommissioning of wells, platforms, and any other structures on the Lease. The Lease terminated on October 15, 2006 and since that time, the Bureau of Safety and Environmental Enforcement ("BSEE") ordered Devon to decommission the remaining wells and platforms on

the Lease. Despite the fact that Devon's only connection to the Lease is as a non-operating record title owner, the BSEE claims statutory authority to order such action. Decommissioning offshore wells and platforms is not a small undertaking; indeed, the initial estimate for undertaking the work ordered by BSEE is nearly $6 million. Per the express terms of the Farmout Agreement, Devon has demanded indemnity from Defendants multiple times over the course of the past year and a half. Defendants have failed to undertake their indemnity obligations, which has forced Plaintiff Devon to file this suit for breach of contract and declaratory action.

B. PARTIES

2. Plaintiff Devon Energy Production Company, L.P. ("Plaintiff" or "Devon") is an Oklahoma limited partnership that is headquartered in Oklahoma City, Oklahoma.

3. Defendant Denbury Resources, Inc. ("Defendant" or "Denbury Resources") is a Delaware corporation that is headquartered in Plano, Texas. Defendant Denbury may be served with process through its registered agent for service of process: C T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

4. Defendant Newfield Exploration Company ("Defendant" or "Newfield") is a Delaware corporation that is headquartered in the Woodlands, Texas. Defendant Newfield may be served with process through its registered agent for service of process: The Prentice-Hall Corporation System, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

C. JURISDICTION

5. The court has jurisdiction over the lawsuit pursuant to 28 U.S.C. §1331 because it is governed by federal law under 43 U.S.C. §1333 of the Outer Continental Shelf Lands Act ("OCSLA"). Additionally and alternatively, this court has jurisdiction over the lawsuit pursuant

to 43 U.S.C. §1349(b)(1), because this suit is a case and controversy arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter.

D. VENUE

6. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

E. FACTS

7. Devon Energy Production Company, L.P. is an independent oil and natural gas company. Devon's operations currently focus exclusively on North American onshore exploration and production, but Devon previously had substantial operations in the Gulf of Mexico.

8. Defendant Denbury Resources is an independent oil and natural gas company based on Plano, Texas. One of Denbury's primary areas of operation is in the Gulf Coast region.

9. Defendant Newfield is an independent oil and natural gas exploration company based in the Woodlands, Texas.

The Parties and their Contractual relationship

10. Through a series of transactions that will be described below, Devon (Farmor) and Denbury Offshore, Inc. ("Denbury Offshore") (Farmee) became parties to a Farmout Agreement, dated July 24, 2000. It is this Agreement that gives Devon an absolute right to indemnity from Defendants Denbury Resources and Newfield.

11. **The Lease**: Effective September 1, 1995, the Minerals Management Service ("MMS") granted an offshore mineral lease identified as OCS-G 15097 (the "Lease") to Seagull Energy E&P Inc. ("Seagull"), which covered all of Block 494 in the West Cameron Area in the Gulf of Mexico. Plaintiff Devon is the ultimate successor in interest to Seagull and the eventual record title owner of the Lease.

12. **The Farmout Agreement**: On July 24, 2000, Ocean Energy (Devon's predecessor-in-interest), through its subsidiary Seagull, farmed out, or transferred its rights to conduct operations on the Lease to Matrix Oil & Gas, Inc. ("Matrix"). Denbury Offshore was the successor-in-interest to Matrix. Per the Farmout Agreement, Matrix, as "Farmee", was entitled to earn an assignment of the "operating rights" as to the specified depths by drilling a successful well on the Lease, while Ocean Energy, through its subsidiary Seagull, as "Farmor", would remain the lessee and the owner of "record title to the Lease. A true and correct copy of the July 24, 2000 Farmout Agreement is attached as Exhibit A.

13. Pursuant to the Farmout Agreement, Matrix drilled the AJ-1/AJ-1D well ("AJ-1 Well")[1] on the Lease and Ocean Energy (Plaintiff Devon's Predecessor in interest) assigned the Lease operating rights to Denbury Offshore, Inc., effective June 8, 2001. Denbury Offshore later assigned its operating rights to several entities.

The Lease terminates and the Bureau of Safety and Environmental Enforcement orders decommissioning.

14. The Lease terminated on October 15, 2006. At the time of termination, Virgin Offshore U.S.A., Inc. and Virgin Oil Company, Inc. held 90% of the operating rights and Challenger Minerals, Inc. held the remaining 10% and Devon, as the successor-in-interest to Seagull, still held 100% record title to the Lease. Equipment also remained on the Lease: the AJ-

[1] The AJ-1 Well was formerly known as the OCS-G 15097 Well No.1, API #1770241273.

1 well, another well (the AJ-2), and the platform remained on the Lease. As such, the BSEE demanded that the operators – Virgin Offshore U.S.A., Inc., Virgin Oil Company, and Challenger Minerals, Inc. – plug and abandon the wells or otherwise decommission the wells, platform, and any other property remaining on the Lease. None of the operators did so. This failure to decommission prompted BSEE to order the operators *and* Devon (as record title owner of the Lease at Termination) to fulfill the decommissioning obligations and to "immediately undertake maintenance of the facilities and wells on the lease pending completion of decommissioning …." A true and correct copy of this order is attached as Exhibit B.[2]

15. The Virgin Companies subsequently filed for bankruptcy and expressly stated that they could not comply with their decommissioning obligations. On July 16, 2015, BSEE sent a second order to Devon and Challenger Minerals to "orderly wind down all functions associated with the facilities" and "maintain such facilities." A true and correct copy of this order is attached as Exhibit C.

Devon's has a contractual right to indemnity for any costs incurred plugging and decommissioning wells and platforms under the Farmout Agreement.

16. In no uncertain terms, Devon, as successor in interest to Ocean, is entitled to indemnity under the Farmout Agreement, which states:

> If any well drilled pursuant to this Agreement results in a dry hole or ceases to produce and Farmee's operations cease for a period of ninety (90) consecutive days, Farmee will plug and abandon such well and be required to cut the well stub fifteen (15) feet below the ocean floor all in accordance with 30 CFR 250 Subpart G, and all other applicable laws and regulations, as may be amended from time to time. In the event of a platform abandonment, Farmee shall remove all templates and pilings to a depth of at least fifteen (15) below the ocean floor all in

[2] The authority for such an order resides in 30 C.F.R. §250.146, which states that the lessee, if one, co-lessees, if there are multiple record title owners, the designated lease operator, the owners of operating rights in the lease, "and the person actually performing the activity to which the requirement applies" are jointly and severally responsible for fulfilling lease obligations.

> accordance with 30 CFR 250.143, and all other applicable laws and regulations, as may be amended from time to time…
>
> Notwithstanding anything found in this Agreement to the contrary, Farmee agrees to assume all plugging and abandonment obligations with regard to its operations on the Farmout acreage subsequent to the date of this Agreement and agrees to indemnify, defend and hold Farmor harmless from any and all costs, expenses, liabilities, claims, demands or causes of action of every kind and character brought by or on behalf of any person or entity arising under the terms of this Agreement with respect to such plugging and abandonment operations or obligations….

Exhibit A at Article IX.

17. In no uncertain terms, Denbury Offshore, or its successor-in-interest, owes Devon indemnity under the Farmout agreement. Consistent with its right to indemnity, by letter dated July 2, 2014, Devon demanded that Denbury Offshore provide financial security for the plugging and abandonment obligations associated with the Lease. A true and correct copy of the July 2, 2014 letter is attached as Exhibit D. Defendant Denbury Resources responded by letter on July 10, 2014, by stating that the ownership of the common stock of Denbury Offshore was conveyed in 2004 to Defendant Newfield and as a result, "no present Denbury entity owed an indemnity or financial security to Devon." A true and correct copy of the July 10, 2014 letter is attached as Exhibit E.

18. Based on Denbury Resources' representations, by letter dated July 23, 2014, Devon requested that Newfield post financial security for the obligations under the Farmout, and notified Newfield that Devon expected Newfield to indemnify, defend, and hold Devon harmless from any and all costs, expenses, liabilities, claims, demands, or causes of action arising out of or related to the duties and obligations set forth in the Farmout, including any asserted by BSEE. A true and correct copy of the July 23, 2014 letter is attached as Exhibit F. A similar request was made on Newfield on November 14, 2014. The demand was subsequently reiterated in numerous

telephone conversations and e-mails with Mr. Austin Lee of the Newfield legal department. Newfield never responded to any of these demands.

19. Devon sent a final demand letter on November 19, 2015 in which it (1) set forth BSEE's demand concerning the Lease, which includes decommissioning all wells, pipelines, platforms, and other facilities; (2) set forth the chronology of the previous indemnity demands; and (3) "tender[ed] notice to Denbury Offshore and Newfield of the BSEE Demand and again assert[ed] a claim against Denbury Offshore and Newfield demanding that Denbury Offshore and Newfield defend, indemnify, release, and hold Devon harmless from and against the BSEE Demand." A true and correct copy of the November 19, 2015 letter is attached as Exhibit G.

20. Newfield responded to this final demand on December 1, 2015, more than a year after Devon's initial indemnity demand, by advising Devon that Defendant Denbury Resources expressly retained "all liabilities and obligations related to" the Lease when Newfield acquired Denbury Offshore from Denbury Resources in 2004. Accordingly, Newfield claimed that the "appropriate party with an indemnification obligation for this property is Denbury Resources, Inc." A true and correct copy of the December 1, 2015 letter is attached as Exhibit H.

21. Based on Newfield's representations, and in a final effort to circumvent the "who's on first" tactics of Denbury Resources and Newfield and to avoid litigation, Devon sent a final indemnity demand to Denbury Resources on December 17, 2015. That demand: 1) set forth BSEE's demand concerning the Lease, which includes decommissioning all wells, pipelines, platforms, and other facilities; (2) set forth the chronology of the previous indemnity demands and responses; and (3) demanded that Denbury Resources defend, indemnify, release, and hold Devon harmless from and against the BSEE Demand. A true and correct copy of the

December 17, 2015 letter is attached as Exhibit I. Devon requested that Denbury Resources respond by January 4, 2016. That date has come and gone and Devon has received no response.

22. Denbury Resources and Newfield have blatantly chosen to shirk their contractual obligations to indemnify Devon and as a result, Devon brings this lawsuit for breach of contract and declaratory judgment.

F. CONDITIONS PRECEDENT

23. All conditions precedent have been performed or have occurred.

G. BREACH OF CONTRACT

24. The allegations set forth above are incorporated in this section as if set forth fully.

25. The Farmout Agreement clearly sets forth the duties of the Farmee, here Denbury Resources and Newfield, to indemnify, defend, and hold Devon harmless from any and all costs, expenses, liabilities, claims, demands, or causes of action arising out of or related to the duties and obligations set forth in the Farmout, including any asserted by BSEE for the plugging and decommissioning of wells, platforms, and any other structures. Despite repeated demands for indemnity, Defendants Denbury Resources and Newfield have failed to indemnify Devon.

26. Defendants' nonperformance is a breach of the Farmout Agreement. As a direct and proximate result of Defendants' breach, Plaintiff has suffered damages and will suffer damages in the amount of at least $5,000,000.

H. REQUEST FOR DECLARATORY JUDGMENT

27. Devon brings this suit for declaratory judgment under both Federal Rule of Civil Procedure 57 and 28 U.S.C. §2201 and 2202. The allegations set forth above are incorporated in this section as if set forth fully.

28. There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Plaintiff therefore requests that declaratory judgment be entered as follows:

a. A determination that indemnity is owed by Denbury Resources and/or Newfield to Devon for all costs, including decommissioning costs, associated with the BSEE's demands as referenced above.

I. ATTORNEYS FEES

29. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code Chapter 38 because this suit is for breach of a written contract. Plaintiff retained counsel, who presented Plaintiff's claim to Defendant. Defendant did not tender the amount owed within 30 days of when the claim was presented.

J. PRAYER

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer and that upon final hearing, the Plaintiff has judgment against Defendant as follows:

a. All actual damages Plaintiff has suffered and may suffer based on the conduct described above as well as pre-judgment and post-judgment interest, which currently is currently estimated to be at least $6,000,000;

b. Declaratory judgment be granted as requested herein;

c. Attorneys' fees and costs;

d. All equitable relief it is entitled to as a result of the conduct described above; and

e. Such other and further relief to which it may be justly entitled.

Respectfully submitted,

By: /s/ Logan E. Johnson

Logan E. Johnson
State Bar No. 24013855
SD of Texas Bar No. 224991
ljohnson@sohjlaw.com
Persis Dean
State Bar No. 24051040
pdean@sohjlaw.com
Mathew Davis
State Bar No. 24078400
mdavis@sohjlaw.com
SCHIFFER ODOM HICKS & JOHNSON, PLLC
700 Louisiana, Suite 2650
Houston, Texas 77002
Tel: 713-357-5150
Fax: 713-357-5160

ATTORNEYS IN CHARGE FOR DEVON ENERGY PRODUCTION COMPANY L.P.

CERTIFICATE OF SERVICE

I certify that on February 15, 2016 a true and correct copy of the foregoing was served in accordance with Federal Rule of Civil Procedure 5(b) on Defendant by mailing to Defendant's registered agent for service of process.

/s/ Logan E. Johnson
Logan E. Johnson